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Proposed Classes

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

17 STACIA STINER; HELEN CARLSON, by
and through her Guardian Ad Litem, JOAN
CARLSON; LAWRENCE QUINLAN, by and
18 through his Guardian Ad Litem, LORESIA
VALLETTE; EDWARD BORIS, by and
through his Guardian Ad Litem, MICHELE
LYTLE; RALPH SCHMIDT, by and through
20 his Guardian Ad Litem, HEATHER FISHER;
PATRICIA LINDSTROM, as successor-in-
21 interest to the Estate of ARTHUR
LINDSTROM; and BERNIE JESTRABEK-
22 HART; on their own behalves and on behalf
of others similarly situated.

Case No. 4:17-cv-3962-HSG

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' ADMINISTRATIVE
MOTION FOR APPOINTMENT
OF GUARDIANS AD LITEM**

Judge: Hon. James Donato
Crtrm.: 11, 19th Floor

Action Filed: July 13, 2017
Trial Date: None Set

23 Plaintiffs,
24 v.
25 BROOKDALE SENIOR LIVING, INC.;
26 BROOKDALE SENIOR LIVING
COMMUNITIES, INC.; and DOES 1 through
100

Defendants.

1 Before the Court is Plaintiffs' Administrative Motion for Appointment of Michele Lytle
2 as Guardian ad Litem for Edward Boris and for Appointment of Heather Fisher as Guardian ad
3 Litem for Ralph Schmidt. Having considered the Motion, the Declarations submitted in
4 support, relevant legal authority, and the pleadings in this case, the Court hereby FINDS
5 and ORDERS as follows:

6 On July 13, 2017, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief
7 and Damages against Brookdale Senior Living, Inc. and Brookdale Senior Living
8 Communities, Inc. (together "BROOKDALE"). The complaint alleges violations of Title
9 III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* ("the
10 ADA"); the Unruh Civil Rights Act, Cal. Civ. Code §§ 51 *et seq.* (the Unruh Act); the
11 Consumers Legal Remedies Act, California Civil Code, Cal. Civ. Code §§ 1750 *et seq.*
12 ("CLRA"); California Welfare & Institutions Code § 15610.30 ("the Elder Financial
13 Abuse statute"); and California Business & Professions Code §§ 17200 *et seq.* ("the
14 UCL"). On March 29, 2018, Plaintiffs filed a Second Amended Complaint adding several
15 class representatives, including Edward Boris and Ralph Schmidt.

16 Under Federal Rule of Civil Procedure 17(c)(2), "A minor or an incompetent person
17 who does not have a duly appointed representative may sue by a next friend or by a
18 guardian ad litem. The court must appoint a guardian ad litem—or issue another
19 appropriate order—to protect a minor or incompetent person who is unrepresented in an
20 action." The appointment process must comport with due process. *See Estate of Ricardo*
21 *Escobedo v. City of Redwood City*, No. C03-03204 MJJ, 2006 U.S. Dist. LEXIS 12457,
22 21-29 (N.D. Cal. Mar 2, 2006) (approving guardian ad litem named in original complaint
23 when no objections were raised and no conflict of interest was apparent); *Scannavino v.*
24 *Florida Dep't of Corrs.*, 242 F.R.D. 662, 664 (M.D. Fla. 2007) (while district court
25 determining party's capacity must use law of that party's domicile, court need not adopt
26 any procedure required by state law but must only satisfy requirements of due process).

27 Plaintiff Edward Boris was a resident of the assisted living facility at Brookdale
28 Fountaingrove from September 2015 through July 2016. *See Declaration of Michele Lytle*

1 in Support of Administrative Motion for Appointment of Guardians ad Litem (“Lytle
2 Declaration”) ¶ 2.

3 Mr. Boris is 86 years old and lacks the physical and mental capacity to prosecute an
4 action against Brookdale Senior Living, Inc. and Brookdale Senior Living Communities,
5 Inc. (“Defendants”) without the appointment of a guardian ad litem. *Id.* ¶ 5. He cannot
6 adequately or consistently appreciate the rights, duties, and responsibilities created by, or
7 affected by, his participation in a lawsuit. *Id.* Mr. Boris has deficits in the areas of
8 alertness and attention, has significant physical limitations, and becomes agitated and
9 disoriented in new environments, as described more fully in the Lytle Declaration. *Id.*
10 ¶¶ 5-8. These deficits would significantly impair Mr. Boris’s ability to carry out his duties
11 and responsibilities as a class representative, and his active participation in this lawsuit
12 without the appointment of a guardian ad litem would be physically exhausting and
13 mentally impossible. *Id.* ¶ 9.

14 Michele Lytle is Edward Boris’s daughter. *Id.* ¶ 5. She has held power of attorney
15 for Mr. Boris since 2011, frequently communicates with his caregivers, and visits him
16 every few months. *Id.* ¶ 3 & 4. Ms. Lytle is a responsible person and is fully competent to
17 act as Plaintiff Edward Boris’s guardian ad litem. She is willing to do so. *Id.* ¶ 10. No
18 previous petition for appointment of a guardian ad litem for Edward Boris has been filed in
19 this matter.

20 There is no conflict of interest between Ms. Lytle and Mr. Boris. Ms. Lytle is not a
21 party to this case. Ms. Lytle will serve as Mr. Boris’s guardian ad litem to ensure that the
22 rights of Mr. Boris and the putative class members are protected and that Defendants cease
23 their unlawful conduct in violation of the ADA, the Unruh Civil Rights Act, the CLRA, the
24 Elder Financial Abuse statute, and the UCL. *See id.* These are Mr. Boris’s interests as
25 well.

26 Plaintiff Ralph Schmidt was an assisted living resident at the facility currently
27 known as Brookdale Tracy from approximately September 2011 through October 30,
28 2017. *See Declaration of Heather Fisher in Support of Administrative Motion for*

1 Appointment of Guardians ad Litem (“Fisher Declaration”) ¶ 2.

2 Mr. Schmidt is 53 years old, is blind, and has significant cognitive impairments,
3 including short-term memory loss. *Id.* ¶ 3. Both his blindness and cognitive impairments
4 are the result of a traumatic brain injury suffered more than 20 years ago. *Id.* He lacks the
5 capacity to prosecute an action against Defendants without the appointment of a guardian
6 ad litem. *Id.* ¶ 6. He cannot adequately or consistently appreciate the rights, duties, and
7 responsibilities created by, or affected by, his participation in a lawsuit. *Id.* Mr. Schmidt
8 has deficits in the areas of memory, alertness and attention, and information processing, as
9 described more fully in the Fisher Declaration. *Id.* ¶¶ 7-9. He is also highly suggestable
10 and easily manipulated. *Id.* ¶ 9. These deficits would make it impossible for Mr. Schmidt
11 to carry out his duties and responsibilities as a class representative, and participation in this
12 lawsuit without the appointment of a guardian ad litem would be nearly impossible for
13 him. *Id.* ¶ 10.

14 Heather Fisher is a professional fiduciary and Ralph Schmidt’s court-appointed
15 conservator. *Id.* ¶ 4. On August 17, 2017, the Superior Court of San Joaquin County
16 appointed Ms. Fisher to serve as conservator for Mr. Schmidt. *Id.* Since becoming his
17 conservator in August 2017, Ms. Fisher has had many interactions with Mr. Schmidt and
18 has reviewed files pertaining to his health and need for assistance with activities of daily
19 living. *Id.* ¶ 5.

20 Heather Fisher is willing to act as guardian ad litem for Ralph Schmidt. *Id.* ¶ 11.
21 No previous petition for appointment of a guardian ad litem for Ralph Schmidt has been
22 filed in this matter.

23 There is no conflict of interest between Heather Fisher and Ralph Schmidt. Heather
24 Fisher is not a party to this case. Heather Fisher will serve as Ralph Schmidt’s guardian ad
25 litem to ensure that the rights of Mr. Schmidt and the putative class members are protected
26 and that Defendants cease their unlawful conduct in violation of the ADA, the Unruh Civil
27 Rights Act, the CLRA, the Elder Financial Abuse statute, and the UCL. *Id.* These are
28 Ralph Schmidt’s interests as well.

CONCLUSION

Based on the foregoing, the Court GRANTS Plaintiffs' Administrative Motion for the appointment of MICHELE LYTHE as Guardian ad Litem for EDWARD BORIS and for the appointment of HEATHER FISHER as Guardian ad Litem for RALPH SCHMIDT for the purposes of prosecuting this lawsuit.

IT IS SO ORDERED.

DATED: 1/17/2019

Haywood S. Gilliam, Jr.
Honorable Haywood S. Gilliam, Jr.

Honorable Haywood S. Gilliam, Jr.